

1 Ramon Rossi Lopez – rlopez@lopezmchugh.com
(California Bar Number 86361; admitted *pro hac vice*)
2 Lopez McHugh LLP
100 Bayview Circle, Suite 5600
3 Newport Beach, California 92660
949-812-5771

4 Mark S. O'Connor (011029) – mark.oconnor@gknet.com
5 Gallagher & Kennedy, P.A.
2575 East Camelback Road
6 Phoenix, Arizona 85016-9225
602-530-8000

7 *Co-Lead/Liaison Counsel for Plaintiffs*
8

9 UNITED STATES DISTRICT COURT

10 DISTRICT OF ARIZONA

11 In Re Bard IVC Filters Products
Liability Litigation

No. MD-15-02641-PHX-DGC

**SUPPLEMENTAL CITATION OF
AUTHORITY IN SUPPORT OF
PLAINTIFFS' OPPOSITION TO
DEFENDANTS' MOTION FOR
SUMMARY JUDGMENT REGARDING
PREEMPTION**

(Assigned to the Honorable David G.
Campbell)

(Oral Argument Requested)

18
19 Plaintiffs file this Supplemental Citation of Authority in support of their Response
20 in Opposition to Defendants' Motion for Summary Judgment Regarding Preemption
21 ("Preemption Opposition") [Doc. 7369] to Defendant C.R. Bard, Inc. and Bard Peripheral
22 Vascular Inc.'s ("Bard's") Motion for Summary Judgment Regarding Federal Preemption
23 ("Motion") [Doc. 5396]. Plaintiff offers the following supplemental authority:

24 *In re: Cook Medical Inc., IVC Filters Marketing, Sales Practices and*
25 *Product Liability Litigation MDL 2570*, No. 1:14-ml-02570-RLY-TAB
MDL No. 2570 Docket Entry (S.D. Ind. September 25, 2017)(denying
26 Defendant IVC filter manufacturer's motion related to federal preemption,
granting Plaintiff's "Cisson" motion *in limine* re: excluding all evidence of
27 FDA 510(k) clearance, granting in part/denying in part various motions,
and taking several motions under advisement)(Exhibit A).
28

1 1. On September 25, 2017, after Plaintiffs submitted their Preemption
 2 Opposition in this case,, Judge Young heard oral argument on various dispositive and
 3 evidentiary motions while presiding over a pre-trial conference in the matter captioned: *In*
 4 *re: Cook Medical Inc., IVC Filters Marketing, Sales Practices and Product Liability*
 5 *Litigation MDL 2570*, No. 1:14-ml-02570-RLY-TAB, the Cook IVC filter litigation
 6 centralized in Southern District of Indiana, MDL 2570.

7 2. On September 26, 2017 the *In re Cook* court issued an Order denying
 8 (among other things) Cook Medical Inc.’s Motion for Summary Judgment Based on
 9 Federal Preemption.

10 3. Plaintiffs hereby submit Exhibit A as supplemental authority to its response
 11 in opposition to Bard’s similarly-based Motion for Summary Judgment Related to Federal
 12 Preemption regarding its IVC filters in the above captioned matter. The authority is
 13 relevant generally to Bard’s Motion arguments and specifically argument to Bard’s claim
 14 on page 1 of its Reply in Support of Its Motion for Summary Judgment Regarding
 15 Preemption [Doc. 7828] that “[n]o court has addressed preemption where a 510(k)-cleared
 16 device has the kind of developed factual record, special controls, device-specific
 17 guidances, history of down classification, and extensive regulatory review associated with
 18 Bard’s IVC filters.”

19 RESPECTFULLY SUBMITTED this 3rd day of October, 2017.

20 GALLAGHER & KENNEDY, P.A.

21 By: /s/ Mark S. O’Connor
 22 Mark S. O’Connor
 23 2575 East Camelback Road
 24 Phoenix, Arizona 85016-9225

25 LOPEZ McHUGH LLP
 26 Ramon Rossi Lopez (CA Bar No. 86361)
 27 (admitted *pro hac vice*)
 28 100 Bayview Circle, Suite 5600
 Newport Beach, California 92660

Co-Lead/Liaison Counsel for Plaintiffs

CERTIFICATE OF SERVICE

I hereby certify that on this 3rd day of October, 2017, I electronically transmitted the attached document to the Clerk's Office using the CM/ECF System for filing and transmittal of a Notice of Electronic Filing.

/s/ Deborah Yanazzo